IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3756 OF 2005

Ganpat Yesu Kadam).. Petitioner

Versus

Municipal Co-operative Bank Ltd. & ors.).. Respondents

Mr.A.B.Desai for the Petitioner.

Mr.Makandar with Mr.P.N.Shastri for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 11TH AUGUST 2005

P.C.:

. This Petition challenges the order dated 20th November 2003 passed by the Member, Industrial Court, Mumbai in Complaint (ULP) No.75 of 2002 dismissing the application for condoning the delay in filing the Complaint. The Petitioner claims that he is entitled to an increment on account of his having completed his Post Graduation. He claims this amount under the Settlement of 1992. In the application for condoning the delay which has been filed along with the Complaint, he has stated that he became aware of the Settlement only in 1998 when the second Settlement was signed granting such increment to Post Graduate. On his application for being paid the increment being rejected, he approached this Court by filing Writ Petition No.2086 of 2002. This was

rejected on 9th August 2002 since the Court was of the opinion that the Respondent, which is Municipal Co-operative Bank Limited was not a "State" within the meaning of Article 12 of the Constitution of India.

2. Upon the Writ Petition being rejected, the Petitioner filed the present Complaint claiming the increment. The grievance of the Petitioner is that although it is money due or wages due from the employer, from month to month, the delay has not been condoned. The Industrial Court has found that there is gross delay in claiming this amount.

3. The Petitioner was obviously prosecuting the wrong remedy by filing a Writ Petition after the Settlement of 1998. In my view, he should not be penalised for having prosecuted the wrong remedy before the wrong forum specially since immediately thereafter he has filed the present Complaint. In any event, it is for the Industrial Court to decide whether the Petitioner should be given the increment right from the year 1990 as prayed for in the Complaint or any date thereafter.

4. Writ Petition allowed. The impugned order dated 20th November 2003 set aside. The application for condonation of delay allowed.